

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4667 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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ASHOK HARILAL SHAH

Versus

UNION OF INDIA

Appearance:

MR MIHIR H JOSHI for Petitioner.
Mr. D.N. Patel, Senior Standing Counsel for
Respondents.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 18/06/2002

ORAL ORDER

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr. B.B. Naik, the learned Standing

Counsel for the Income Tax Department waives service of Rule. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. On 18th June 1983, the Officers of the Income Tax Department at Ahmedabad carried out search and seizure operations under Section 132 of the Income Tax Act, 1961 [hereinafter be referred to as "the Act"] at the petitioner's premises and fixed deposits and Indira Vikas Patras were seized in the course of the said operations. The respondents framed assessments and the valuables seized during the search operations were added in the income of the petitioner. In the course of these proceedings, the petitioner went on requesting the respondents for releasing Indira Vikas Patras as they had already matured and he was losing interest thereon. On 11th August, 1999, the petitioner also gave security of other fixed deposits against the tax liability raised by the respondents. The respondents released the fixed deposits which were seized during the search operations but the Indira Vikas Patras were not released. Hence the petitioner made another request on 1st September 1999 for releasing the Indira Vikas Patras as sufficient security was given against the tax liability. By March 2001, the adjudication proceedings under the Act concluded with the orders of the Income Tax Appellate Tribunal which deleted all the additions in the petitioner's case. The petitioner therefore renewed his request for releasing the Indira Vikas Patras which had already matured, as the Income Tax Appellate Tribunal had passed orders in favour of the petitioner. Even the fixed deposits which were given by the petitioner for security against possible tax demand were released by the respondent No.3 on 11th March 2002, as no payment remained outstanding against the petitioner. The petitioner has therefore been constrained to approach this Court for appropriate directions to the respondents for releasing the Indira Vikas Patras or the maturity value thereof, along with the interest from the due date/s till the date of payment. The petitioner has given details about Indira Vikas Patras, the date of maturity and the interest lost in a statement annexed to his letter dated 1st September, 1999 to the Deputy Commissioner of Income-tax, Circle 4(1), Ahmedabad (Annexure "B") to the petition (page 9).

3. In response to the notice issued by this Court, Mr. B.B. Naik, the learned counsel appearing for the respondents states that unfortunately all the Indira Vikas Patras which were seized from the petitioner during the search and seizure operations on 18th June 1993 were stolen by a departmental employee Rakesh Babulal Mistry

and therefore criminal case was filed against the said person being Criminal Case No. 4342 of 1995 which is pending in the Court of learned Metropolitan Magistrate, Ahmedabad, Court No.9. The said accused has also expired by now. However, the Indira Vikas Patras which were recovered from the said accused are still lying as muddamal articles with the aforesaid criminal Court. According to Mr. Naik, the police had recovered some of the Indira Vikas Patras and an amount of Rs. 38,700/= which were produced before the Criminal Court as muddamal articles. Mr. Naik is, however, not in a position to state as to whether any of those Indira Vikas Patras is encashed by the accused or any other person and whether all the Indira Vikas Patras are still lying as muddamal articles in the above criminal case.

Mr. Naik further states that if the learned Public Prosecutor has not made an application before the Criminal Court for getting back the Indira Vikas Patras and the cash recovered from the accused, such an application will be made on behalf of the Assistant Commissioner of Income Tax, Ahmedabad, Circle 15 by 20th June 2002, as the matter is now posted for hearing before the learned Magistrate on 24th June 2002 for disposal of muddamal articles.

4. As far as the petitioner's prayer for awarding interest is concerned, Mr. Naik submits that the respondents may not be directed to pay any interest to the petitioner, as the respondents cannot be held responsible for the period during which the Indira Vikas Patras could not be returned to the petitioner. Mr. Naik also prays for some time to make further submissions in this behalf.

5. Having heard the learned counsel for the parties, it appears to the Court that the respondents have no outstanding tax demand against the petitioner and the Indira Vikas Patras described in Annexure 'B' [Page 9] were admittedly seized from the petitioner way back in June 1993 and they had matured number of years back, the interest of justice require issuance of appropriate directions to the respondents so that the petitioner is paid all his dues expeditiously.

6. As regards the petitioner's claim for interest, one thing which clearly emerges from the record is that the Indira Vikas Patras were recovered from the petitioner in proceedings which ultimately culminated into the orders of the Income-tax Appellate Tribunal in favour of the petitioner by March 1999/March 2000. Even

otherwise, it was for the Department to keep the Indira Vikas Patra in safe custody. If a departmental employee managed to take away the Indira Vikas Patras and to encash some of them, the petitioner cannot be made to suffer for no fault of his and he is certainly entitled to be compensated for the loss of interest.

7. The next question is on what rate should interest be awarded. Mr Joshi for the petitioner vehemently submitted that the rate of interest on the Indira Vikas Patra amounts was 15% compound interest. Even when the amounts matures on different dates between 1993 and 1998, the petitioner could have invested the amounts in National Saving Certificates offering 12% compound interest. The petitioner has been deprived of interest for all these years running into 4 to 9 years. Since the period in question is fairly long, 12% compound interest would work out to 18 to 20% simple interest.

8. These days interest rates have been going down. Of course, the grievance is in respect of the past period from 1993 onwards and, therefore, the present day rate of 9% p.a. may not serve as the ideal indicator. Even so, considering the fact that the period in question, during which the petitioner neither got the principal amount nor interest thereon, covers a period of 9 years in case of some of the Indira Vikas Patras and shorter period in case of other Indira Vikas Patras and considering the fact that the petitioner is a retired employee and that the principal amount awarded is only Rs.43,900/=, the Court is of the view that the petitioner should be compensated with simple interest at the rate of 14% p.a. from the due dates mentioned in the statement annexed to the letter dated 1st September, 1999 (Annexure "B" to the petition) within one month from the date of receipt of the writ of this Court.

9. Accordingly, this petition is allowed in terms of the following directions :

- (i) The respondents shall pay to the petitioner Rs. 43,900/= which is the maturity value of the 19 Indira Vikas Patras as prescribed in the statement annexed to the letter dated 1st September, 1999 (Annexure "B" to the petition -Page 9) along with simple interest at the rate of 14% p.a. from the due dates till the date of payment. The interest so payable will be quantified for the period upto 30th June 2002 and shall be paid to the petitioner. If this direction is not complied with within one month

from the date of receipt of the writ of this Court, the amounts due and payable, as per this direction, shall carry further interest from 1st July 2002 till the date of payment at the rate of interest at 14% p.a.

(ii) The learned Metropolitan Magistrate, Ahmedabad, Court No.9 shall hear and decide the application/s for disposal of muddamal articles in Criminal Case No. 4342/1995 as expeditiously as possible and in any case latest by 30th June 2002.

(iii) Since the respondents are directed to pay the aforesaid amounts to the petitioner, the respondents are not required to return the Indira Vikas Patras to the petitioner but the respondents shall be entitled to encash the same from the Postal Department on their own without requiring any documentation or certificates from the petitioner and the Postal Authorities shall make the payments accordingly to the respondents, i.e. to the Income Tax Department.

10. Rule is made absolute to the aforesaid extent with no order as to costs. Writ to be sent to the learned Metropolitan Magistrate, Ahmedabad Court No.9 to be served by Direct Service through respondent No.4.

[M.S. Shah, J.]

rmr. [K.A. Puj, J.]